THE HON'BLE SMT. JUSTICE T. MEENA KUMARI

AND

THE HON'BLE SRI JUSTICE P. LAKAHSMANA REDDY

W.A.NO.1499 OF 2005

Dt:20.08.2005

Between:

Smt.Kasturi Bai.

.. Petitioner

and

The Managiong Director and another

.. Respondents

THE HON'BLE SMT. JUSTICE T. MEENA KUMARI

AND

THE HON'BLE SRI JUSTICE P. LAKAHSMANA REDDY

W.A.NO.1499 OF 2005

JUDGMENT: (per the Hon'ble Smt. Justice T. Meena Kumari)

This writ appeal is preferred against the Order, dated 29.07.2005, in W.P.No.11852 of 2004.

The appellant herein was appointed as a Sweeper in the canteen of the respondents-Corporation, on compassionate grounds, on 04.03.1991. According to her, she was born on 04.06.1950. Her case is that at the time of her appointment, the record disclosed her date of birth as 03.12.1951, but the same was struck down and shown as 08.08.1945. Therefore, she made a

representation to the Personal Manager, E.C.I.L., on 03.11.2003, to the effect that her date of birth is 04.06.1950, but not 08.08.1945. She alleges that the respondents are trying to retire her by the end of August, 2005. Hence, she filed the writ petition seeking a *mandamus* to declare that her correct date of birth is 04.06.1950, as per the legal heir certificate and the declaration made before the VI Metropolitan Magistrate, Hyderabad.

After a careful analysis of the material available on record and after hearing the arguments advanced on behalf of both the parties, the learned Single Judge, through the Order under appeal, dismissed the writ petition, holding that the appellant has failed to make out any case to show that her correct date of birth is 08.08.1945. He further observed that these are all the serious disputed facts, which cannot be gone into in a writ petition filed under Article 226 of the Constitution of India. Aggrieved by the said order, the appellant preferred this appeal.

Heard the learned counsel on either side.

It has been contended by the appellant before the learned Single Judge as well as this Court that her brother viz. Alimuttu, who is working as cook in Air force, was born on 28.05.1945 and hence by any stretch of imagination her date of birth could not be 08.08.1945. However, the learned Single Judge did not find favour with the contention advanced by the appellant and held that these questions cannot be delved into in a writ petition.

Having regard to the material available on record, it is seen that the attestation forms etc. filed by the appellant show her date of birth as 08.08.1945 and moreover the date of birth certificate obtained by her from the office under due acknowledgment shows her date of birth as 08.08.1945. As observed by the learned Single Judge, the appellant, except making a representation, dated 31.08.2001, to the effect that her date of birth is not correct, has not put forward any explanation as to how she herself shown the date of birth as 08.08.1945. Therefore, we are also in complete agreement with the Order of the learned Single Judge. However, it has to be observed that the remedy left open to the appellant is to approach the appropriate civil Court, to prove her date of birth, in accordance with law, if she so desires. She is at liberty to implead the employer as a party to the said proceedings. It is also further made clear that

the appellant is at liberty to seek appropriate injunction orders before the civil Court.

Subject to the above observations, the writ appeal is dismissed at the threshold.

(T. Meena Kumari.J)

(P. Lakshmana Reddy.J)

Dt.20.08.2005

Note:

Issue CC by 23.08.2005

(BO)

ksld/kdl